

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION

MDL No. 1456

Civil Action No. 01-12257-PBS

THIS DOCUMENT RELATES TO:
ALL CLASS ACTIONS

Judge Patti B. Saris

**SCHERING-PLOUGH CORPORATION'S AND WARRICK PHARMACEUTICALS
CORPORATION'S MOTION TO STRIKE PORTIONS OF PLAINTIFFS' FOURTH
AMENDED MASTER CONSOLIDATED CLASS ACTION COMPLAINT
AND NOTICE OF ERRATA**

Defendants Schering-Plough Corporation (“Schering”) and Warrick Pharmaceuticals Corporation (“Warrick”) respectfully move this Court to strike portions of the Fourth Amended Master Consolidated Class Action Complaint and Notice of Errata (“FAMCC”) relating to Schering and Warrick. In support of this motion, Schering and Warrick state the following:

1. In its August 16, 2005 Memorandum and Order, the Court provided Plaintiffs leave to amend the Second Amended Consolidated Class Action Complaint within 60 days “to propose individual class plaintiffs who are Medicare Part B beneficiaries” as against Track 1 Defendants.

2. On October 17, 2005, Plaintiffs filed their Third Amended Consolidated Class Action Complaint (“TAMCC”). The TAMCC proposed new class representatives as to the Track 1 Defendants.

3. In Case Management Order #16 (CMO #16), the Court granted Plaintiffs leave to “add plaintiffs or proposed class representative for claims against the *Track Two Defendants*” (emphasis added). CMO #16 did not grant Plaintiffs leave to add plaintiffs or proposed class representatives for claims against Track One Defendants, such as Schering and Warrick.

4. On March 1, 2006, Plaintiffs filed their FAMCC. In the FAMCC, Plaintiffs purport to add two new class representatives as to Schering and Warrick. FAMCC ¶¶ 23, 24.

5. Pursuant to CMO #16, Plaintiffs did not have leave to add new class representatives as to Schering and Warrick. Plaintiffs otherwise neither sought nor received leave of this Court to file an amended complaint as to Schering and Warrick pursuant to Fed R. Civ. P. 15(a).

6. Furthermore, the Court’s January 30, 2006 Consolidated Order re: Motion for Class Certification, in which the Court reserved for itself the option to add or delete class representatives, does not allow Plaintiffs to add class representatives unilaterally without Court approval and the opportunity for discovery into the propriety of the proposed additions that the Court might reasonably require as a prerequisite.

7. Schering and Warrick adopt the reasons given in support of the Track 2 Defendants’ Motion to Strike Portions of the Fourth Amended Master Consolidated Class Action Complaint and Notice of Errata as additional grounds upon which this motion should be granted.

WHEREFORE, Schering and Warrick respectfully request that their motion to strike portions of the FAMCC be GRANTED.

REQUEST FOR ORAL ARGUMENT

Pursuant to LR. 7.1, Schering and Warrick believing that oral argument may assist the Court in resolving the issues presented in this motion and respectfully request that oral argument be heard.

Schering-Plough Corporation and
Warrick Pharmaceuticals Corporation
By their attorneys,

/s/ Eric P. Christofferson

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Dated: March 17, 2006

CERTIFICATE OF COMPLIANCE WITH LR. 7.1

I hereby certify that counsel for Schering and Warrick attempted to confer with counsel for Plaintiffs in a good faith effort to resolve or narrow the issues set forth herein. As of filing, Counsel for the Plaintiffs has not responded to the email message, sent by counsel for Schering and Warrick, and has not indicated whether or not Plaintiffs assent to this motion.

/s/ Eric P. Christofferson
Eric P. Christofferson

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2006, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Eric P. Christofferson
Eric P. Christofferson